IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.38729 of 2007
RAJENDRA RAM @ RAI & ORS
Versus
THE STATE OF BIHAR & ANR

For the Petitioners	**: M/s. Ram Briksh Singh Pahepuri & Awadhesh Kumar Singh, Advocates.**
For the State	**: Mr. Jharkhandi Upadhayay, A.P.p.**
For O.P. No.2	**: Mr. Ashutosh Kumar, Advocate.**

O R D E R

All the eight accused who are officials of the Government attached in various capacity with the Land Acquisition Office, Kosi Project, Darbhanga, have preferred this application for quashing of the order dated 25.11.2006 passed by Sri S.K. Singh, Judicial Magistrate, Madhubani, in Complaint Case No.760 of 2006, whereby he has taken cognizance of offences under Sections 323/427/504 I.P.C. against the petitioners.

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One Mohammad Hasim, impleaded herein as O.P. No.2, filed the aforesaid complaint on 31.7.2006 in respect of an occurrence which is said to have taken place at around 2.30 P.M. on 27.7.2006 inter alia stating that some lands of the complainant and his co-villagers had been acquired under the Kosi Project the compensation whereof was to be distributed between 27.7.2006 and 29.7.2006 and as per notice the complainant and other co-villagers had assembled at the venue, the Inspection Bungalow , Kosi Project at Sakri, between 10-11 A.M. but none of the officials were present there. It is alleged that accused persons arrived at about 2.30 P.M. and when the

complainant enquired about the delay, petitioner no.1 became angry and hurled abuses at him. The distribution work started at about 3 P.M. and as cheques were being prepared, petitioner nos.2 and 3 conveyed to the complainant that since the Government jeep had gone out of order and they had to hire a private vehicle to reach the venue and thereby had entailed a cost of Rs.1000/- , the cheques would be distributed only after each of them had paid Rs.150/- . It is further alleged that when the farmers refused to entertain the demand of the officials, the petitioner no.1 directed to stop the work and when the complainant started making inquiries from the petitioners, petitioner nos.1, 5 and 8, ordered to kick out the complainant from the venue following which the accused persons manhandled the complainant and threw him out of the venue as a result whereof his clothes were torn and the watch was also damaged causing a loss of Rs.500/- to the complainant.

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It appears that after holding an inquiry under Section 202 Cr.P.C. the learned Magistrate found a prima facie case to have been made out and took cognizance as stated above.

It has been submitted on behalf of the petitioners that as a matter of fact , the complainant and his co-villagers were opposing the land acquisition proceeding and the present case had been lodged only with a view to delay and disturb the acquisition proceeding. It is further submitted that the notices were issued to the complainant and other land holders to appear at the office of the Executive Engineer on 27.7.2006 and that at the assembly the complainant and other land

holders, only with a view to disturb the acquisition proceeding, misbehaved with the petitioners and unpalatable remarks bordering on caste of petitioner no.1 were sought to be hurled and in the ensuing scuffle some of the officials received minor injuries. For the occurrence, petitioner no.1 on the same day wrote a letter to the Officer Incharge of Sakri P.S. and on the basis thereof Pandaul P.S. Case No.120 of 2006 was registered under Sections 147/341/323/353/379/504 I.P.C. and Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against 36 persons and the present case had been filed after four days of the occurrence by way of a counter blast and to wreak vengeance.

It is also submitted that even if the allegations taken at their face value is accepted then the same was in discharge of official duty for which a previous sanction was a condition precedent before the cognizance could have been taken. In this connection, it was submitted that it would be apparent from perusal of the F.I.R. of Pandaul P.S. Case (Annexure-4) that it was much earlier in time and the complainant and his witnesses were figured as accused in that case which would only support the submission that the instant case is by way of a counter blast to subserve the police case. In this connection reference has been made to Annexure-5 which is the order sheet of the Special Land Acquisition Officer, Kosi Project from 26.5.2006 to 13.7.2006 whereby the date had been fixed for distributing the cheques to the land holders whose lands had been acquired.

Admittedly, all the petitioners are public servants. It is true

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that a public servant having committed an offence has to be prosecuted but if the act complained of is done by him in course of discharging official duties, then the prosecution can take place only after sanction has been obtained from the appropriate Government even if it is shown that while discharging his official duties, he has exceeded his lawful authority and had committed an offence.

In the instant case it is admitted in the complaint petition that the complainant and the co-villagers had gathered at the Inspection Bungalow to receive payment. It is also a fact that all these petitioners had arrived at the place of occurrence to distribute cheques and as a matter of fact cheques were being prepared when the ruckus started for which two versions have been presented, one in the letter of petitioner no.1 and the other in the complaint petition. Therefore, the petitioners were discharging their official duties at the relevant time when the occurrence is alleged to have taken place. When law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command and it depends on the facts and the circumstances of each case. In the instant case , the petitioners were admittedly acting in discharge of their official duties and as would appear from the F.I.R. the ruckus had been created by the complainant party. In such a situation, a previous sanction from the competent authority was a pre-requisite in view of Section 177 Cr.P.C. before cognizance could have been taken.

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For the reasons stated above, the impugned order taking cognizance against the petitioners is hereby quashed and the

application is allowed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated:The 20th of August, 2008.
Pradeep Srivastava/A.F.R.

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